

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.

HILLSBOROUGH COUNTY SUPERIOR COURT - NORTH  
STATE OF NEW HAMPSHIRE

V.

ADAM MONTGOMERY

216-2022-CR-20

216-2022-CR- 2372

**DEFENDANT’S RESPONSE TO STATE’S PARTIAL OBJECTION TO DEFENDANT’S  
MOTION *IN LIMINE* – IMPEACHMENT EVIDENCE RE: KAYLA MONTGOMERY**

Now comes Adam Montgomery, by and through his Public Defenders, Caroline L. Smith, Esq., and James T. Brooks, Esq., and hereby responds to the State’s partial objection to Mr. Montgomery’s motion *in limine* to admit impeachment evidence regarding Kayla Montgomery.

As grounds for this response, the following is stated:

1. It appears that the State agrees that the following Kayla Montgomery convictions are admissible under N.H.R.Evid 609:
  - a. Convictions for two charges of perjury: 216-2022-CR-01037;
  - b. Convictions for false report to police officer: 447-2013-CR-00786; and
  - c. Conviction for attempted possession of prescribed drug (by forging prescription): 215-2012-CR-00282. Incarcerated on 8/29/2013 for probation violation;
2. It appears the State agrees that the following charges against Kayla Montgomery, subsequently nol prossed, may be introduced as impeachment:
  - a. Charges of two counts of receiving stolen property: 2016-2022-CR-0652; and
  - b. Charge of theft by deception: 216-2022-CR-00039;

3. It appears the State does not object to but misapprehends the grounds for introduction of the following charge:
  - a. Dealing/possession of prescription drugs – 9/9/2022 offense date;
4. At the time of the filing of the motion, the State had not yet sent criminal records of witnesses. However, records received in a prior trial referenced a class A misdemeanor charge of “Deal/Possess Prescription Drugs” with an offense date of 9/9/2022. No further information was given regarding disposition of this offense. Generally, a misdemeanor charge for a drug offense is not admissible; however, in this case, it appeared that the charge was pending during the time period that negotiations regarding the disposition of her felony charges were ongoing. Because this charge appeared to have been pending during the negotiation period, it is relevant for impeachment purposes just as the two counts of receiving stolen property and theft by deception referenced in paragraph 2 above.
5. Discovery in the within matter contained reports of an investigation of sales of narcotic drugs by Kayla Montgomery and Terrance “Biggie” Jackson. A warrant was issued on August 22, 2022 to search the hotel room where the pair were believed to be selling drugs. Terrance Jackson was arrested, but Kayla Montgomery was not. However, Ms. Montgomery was aware that she was being surveilled and it was suspected that Ms. Montgomery falsified evidence by wiping incriminating evidence from her phone. It was not known if this investigation resulted in the offense that appeared on the criminal record because the offense was dated September 9, 2022, not August 22, 2022.
6. On or about December 27, 2023, defense counsel obtained a copy of the court file regarding the Misdemeanor Deal/Possess Prescription drugs. The documents revealed

that Kayla Montgomery committed the charged offense on or about September 9, 2022, the complaint was brought by the Manchester Police, Ms. Montgomery was represented by the same attorney who was representing her in negotiating her deal with the Attorney General's office in this matter, and the charge was nol prossed the same day as Ms. Montgomery pled guilty to the perjury charges reference above and as part of her agreement with the prosecutors.

7. The court documents obtained by defense counsel were forwarded to the State that same day - December 27, 2023 - with a request for the records of the arrest. As of this response, the State has not responded to that request.
8. Montgomery's initial pleading clearly stated that that charges pending at the time Ms. Montgomery was purportedly cooperating with police and up to her plea on the perjury charges were admissible as motive. At the time of its response to the pleading, the State possessed a copy of the complaint and subsequent nol pross. Nevertheless, the State claimed in its response that the theory of admissibility was unexplained. The State then claimed that Kayla's drug use, as Adam's drug use, was inextricably intertwined with the charged offenses and the charge was therefore admissible on that basis.
9. Adam Montgomery disputes the State's argument that drug use was inextricably intertwined with the pending charges. The basis for admissibility of Deal/Possess Prescription Drugs was that the pendency of that charge, like the pendency of the two receiving stolen property charges and one theft charge, created motive for Ms. Montgomery to curry favor with the State in negotiations to testify against Adam Montgomery.

10. The State also appears to object to introduction of Ms. Montgomery's admitted theft at her place of employment, Dunkin Donuts. The State incorrectly asserts that defense counsel alleged that all thefts were crimes of dishonesty. Defense counsel did not. In fact, the motion accurately asserts that the prior convictions for theft of lost or mislaid property and theft by misapplication did not appear to be qualifying offenses under Rule 609. Rather, the motion asserted that the admitted theft *from her employer* was a crime of dishonesty. An employee in a cash business such as Dunkin Donuts is in a position of trust with regard to the money being handled, and the violation of that trust is a crime of dishonesty.
11. More to the issue of admissibility, however, is that Ms. Montgomery's ongoing lies in this case included a false story that Adam Montgomery dropped her off at work at Dunkin Donuts on November 30, 2019 and then drove off with the kids, including Harmony, to take Harmony to stay with her biological mother. Ms. Montgomery was subsequently charged with perjury for testifying falsely about the time of a prior work shift and testifying falsely regarding a prior work location. The fact that Ms. Montgomery was fired for theft prior to the family being evicted and living in the car goes to the magnitude of Kayla Montgomery's lie under oath to the Grand Jury.

WHEREFORE, Adam Montgomery respectfully responds to the State's partial objection.

Respectfully submitted,

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**CERTIFICATE OF SERVICE:**

I hereby certify that a copy of this pleading has been forwarded to Senior Assistant Attorney General Benjamin J. Agati and Assistant Attorney General R. Christopher Knowles on this 14th day of January 2024.

/s/ Caroline Smith  
Caroline Smith, Esq.